



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

May 16, 1952

Hon. Hal H. Bookout
County Attorney
Navarro County
Corsicana, Texas

Opinion No. V-1457

Re: Authority of the Commissioners' Court to lease or sell a hospital building to a non-profit private organization for operation as an old folks' home.

Dear Sir:

You have requested an opinion of this office in which you submit the following facts:

"The Navarro County Memorial Hospital is under construction and will be ready for use as a County Hospital in July, 1952. When the new hospital is completed and is occupied, Navarro County will no longer have need for the old Physicians' & Surgeons' Hospital building and premises.

"The old P & S Hospital has been operated as a county institution and as a hospital for about thirty years. The building is old and in much need of repairs. Navarro County has no need for this building and premises in that all equipment and furnishings now in the old hospital building will be moved to the new hospital, and the old hospital will be entirely abandoned.

"The Commissioners' Court appointed a committee of respectable citizens to investigate the need for a home for the needy, aged and senile, and the suitability of the P & S Hospital property for such purposes. The committee, after a thorough investigation, reported that there existed in this county a great need for such an institution and recommended the use of the old hospital property for such purposes.

"The county, because of limited

finances, cannot operate such an old folks' home, and further, county operation would result in the loss of Old Age Assistance checks to those who might desire to take advantage of such a rest home.

"A group of responsible interested citizens met and decided to ask the county to sell at a nominal figure or to lease for a small monthly rental the old hospital premises, the deed or lease to be made to Trustees of the Navarro County Old Folks' Home, a non-profitable organization to be organized and to be governed by Trustees. The control of the home will be vested in citizens chosen from the county at large, and these Trustees may be appointed by the Commissioners' Court if so desired. The institution will be operated and maintained at no expense to the county and as a non-profit organization.

"The old folks who will live in the home will pay a nominal sum for their accommodations when they are financially able to do so, but none will be refused admission solely because of lack of funds.

"Either a long term lease or a purchase at private sale at a reasonable sum will be acceptable to those who are willing to underwrite the project. If a lease is made, a clause authorizing the Commissioners' Court to terminate the lease if the home is not operated fairly and in compliance with its requirements will be acceptable."

Then you ask:

"1. Whether or not the Commissioners Court is empowered to call an election, to ascertain whether or not the people of Navarro County desire the old hospital building to be used and operated privately as an old folks' home.

"2. Whether or not the Commissioners Court of Navarro County can lease the hospital properties for a nominal consideration and restrict the use to an old folks' home to be operated privately on a profit or non-profit basis.

"3. Can property, under Art. 1577, be sold with restrictions or stipulations in the order of sale that the property be used after the sale for only philanthropic purposes."

The decisions of the Texas courts have repeatedly held that the commissioners' court is a court of limited jurisdiction and has only such powers as are conferred upon it by the statutes and Constitution of this State, either by express terms or by necessary implication. Childress County v. State, 127 Tex. 343, 92 S.W.2d 1011 (1936); Von Rosenberg v. Lovett, 173 S.W. 508 (Tex. Civ. App. 1915, error ref.); Roper v. Hall, 280 S.W. 289 (Tex. Civ. App. 1925).

We know of no statute authorizing a county to call an election for such a purpose. Neither is there a law which authorizes a county to lease its hospital building that is no longer used as a hospital. Although Section 2 of Article 1577, V.C.S., authorizes certain counties to lease their property, it has no application to Navarro County because of the population brackets fixed therein. In Attorney General's Opinion V-1085 (1950), it was held that a county which did not come within Section 2 of Article 1577 had no authority to lease its property. Therefore, both of your first two questions are answered in the negative.

Article 1577, V.C.S., provides in part:

"Section 1. The Commissioners Court may, by an order to be entered on its minutes, appoint a commissioner to sell and dispose of any real estate of the county at public auction. The deed of such commissioner, made in conformity to such order for and in behalf of the county, duly acknowledged and proven and recorded shall be sufficient to convey to the purchasers all the right, title, and interest and estate which the

county may have in and to the premises to be conveyed. Nothing contained in this article shall authorize any Commissioners Court to dispose of any lands given, donated or granted to such county for the purpose of education in any other manner than shall be directed by law."

The above statute does not authorize a private sale of property by a county, but requires that it be made at public auction. Ferguson v. Hal-sell, 47 Tex. 421 (1877). Moreover, in Llano County v. Johnson, 29 S.W. 56 (Tex. Civ. App. 1895), it is stated:

"It is next contended that the order of the commissioners' court of Llano county, authorizing the land to be sold, and the sale thereof to Johnson, was unauthorized, because it was virtually a donation and disposition of the lands of the county for purposes not authorized by law; and that the order requiring the purchaser to erect suitable buildings thereon, and to use the same for 10 years for educational purposes, was imposing and attaching to the purchase of the property illegal conditions, which were calculated to deter bidders, and to defeat the policy of the law requiring counties to only dispose of their real estate at public auction to the highest and best bidder therefor. . . . The commissioners' court of the county occupy towards its property a trust relation, and they can only dispose of its property in the manner required by law, and for purposes that are in keeping with the trust they represent. They have no right to donate the county property or dispose of it so as to virtually amount to a donation. It is a trust estate, and principles of equity will not permit them to be liberal and generous with property they do not own, and which they hold in trust for public purposes. The order of the court in question, and the deed executed to Johnson, show that the property was sold for a nominal sum, and that it was, in effect, donated to the purchaser for educational purposes. This was clearly unauthorized. The property, so the deed recites,

was sold under the semblance of a public sale, to the highest bidder; but, being sold under the order set out, that required it to be sold and used for educational purposes, was well calculated to deter and hinder a sale of the property for a fair price; and the conclusion is irresistible that the consideration for the sale was not the nominal sum mentioned in the deed, but was the use of the property for educational purposes.
. . . "

In view of the foregoing, it is our opinion that the county cannot sell property with the restriction that it be used only for philanthropic purposes.

If sale at public auction without restrictions will not accomplish the purpose desired by the county, it is suggested that this matter be called to the attention of the Legislature to the end that appropriate legislation may be enacted authorizing the leasing of the property in question.

SUMMARY

There is no law authorizing a county to call an election to determine if a county-owned building formerly used as a hospital should be leased. Neither is there a law which authorizes Navarro County to lease such building. Section 1 of Article 1577, V.C.S., requires that county real estate which is to be disposed of must be sold at public auction and without restrictions. Ferguson v. Halsell, 47 Tex. 421 (1877); Llano County v. Johnson, 29 S.W. 56 (Tex. Civ. App. 1895). An act of the Legislature would be required in order to authorize the leasing of the property in question.

APPROVED:

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BA:mh

Yours very truly,

PRICE DANIEL
Attorney General

By 
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